

Message

From: Walter Lamb [landtrust@ballona.org]
Sent: 1/18/2019 1:28:58 AM
To: Fran Diamond [mediafranh2o@gmail.com]; CCaspary@lvmwd.com; sam.schuchat@scc.ca.gov; Lippman, Timothy [tlippman@bos.lacounty.gov]; sluce@healthebay.org; Bruce Reznik [bruce@lawwaterkeeper.org]
CC: Wang, Guangyu@Waterboards [Guangyu.Wang@waterboards.ca.gov]; Coupe, David@Waterboards [david.coupe@waterboards.ca.gov]; Tom Ford [tford@santamonica-bay.org]; Yelensky, Erica [Yelensky.Erica@epa.gov]; E.J. Caldwell [edwardc@westbasin.org]; kara kem [kara.kemmler@scc.ca.gov]
Subject: Monthly fact check

Dear EC members,

Thank you for the opportunity to comment at your meeting. The factual record can help you avoid basing important decisions on inaccurate assertions and casual musings. As such, I respectfully offer these corrections for the record:

- To be clear, your National Estuary Program **DOES NOT** have a non-profit management conference as was stated at the meeting. When none of you spoke up to correct that misstatement I assumed I must have misheard it and therefore asked for it to be repeated. SMBRC is the **public agency** management conference of the local NEP.

- Because of the above fact, you **DO NOT**, in fact, have a similar structure to the dozen or so NEP's that do have a non-profit management conference, and you **ARE NOT** "just like Morro Bay, but with more people" as incorrectly stated at the meeting. Your attorney expressly addressed the difference between SMBRC and Morro Bay in a 2015 memo to you, one of the factual records we requested in vain to be included in this process. Trivializing the legislature's desire for the Santa Monica Bay NEP to be managed by a state agency would be a mistake.



State Water Resources Control Board

TO: SANTA MONICA BAY RESTORATION COMMISSION EXECUTIVE COMMITTEE

**FROM: Frances L. McChesney
Attorney IV
OFFICE OF CHIEF COUNSEL**

DATE: May 20, 2015

¹ There are many estuaries identified by USEPA as part of the National Estuary Program (NEP) throughout the country, including three in California. Each has a somewhat different structure. For example, the ~~Morro~~ Bay NEP is
(footnote continued on next page)

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(footnote continued from previous page)

implemented entirely by a private foundation, called the Bay Foundation of Morro Bay, using grant funds from USEPA; there is no public agency like the Commission involved in that Program. The Clean Water Act does not require a public agency to implement a bay restoration plan, but the Legislature chose to include a more inclusive structure for the Santa Monica Bay NEP.

- It was asserted that TBF is the host entity of the local NEP. We have asked many times for the underlying authority for that assertion, with no answer. A 2013 master's thesis [[link](#)] cites US EPA as its source to assert that the host entity of the Santa Monica Bay NEP is the State Water Resources Control Board, which would have clearly been the case when SWRCB was receiving the Section 320 grant (up until 2005) and all NEP staff were housed in the SWRCB offices (up until 2008). To the extent that there is to be a change in the host entity, that is a formal process requiring Governing Board approval, for which we can see no record in the minutes. Is it the SMBRC's position that SWRCB no longer serves as host entity, despite housing SMBRC's two state employees?

- If TBF is indeed the host entity, and TBF is in turn hosted by LMU, would not the agreement between LMU and TBF be an important document of the NEP? We've been unable to obtain this document to date but we are confident we will obtain it soon. Likewise, we will obtain the past Bylaws of TBF which will shed light on the original staffing arrangement.

- Regarding the draft diagram prepared by TBF's facilitator that moved TBF to the top of the structure (as compared to the previous US EPA diagram showing TBF staff reporting up to the management committee) I suggest that everyone read the documents posted by your staff for the December GB meeting. Per the guidelines, program staff are to report to the management committee, not the host entity. And they are to be autonomous and independent of the host entity. Is that the case currently?

- Regarding the assertion that TBF is the recipient of the Section 320 funds, that is highly misleading, and precisely the type of open question this process was supposed to address. TBF began receiving the Section 320 grant funds in 2006 (16 years after TBF was created by the SMBRP) conditioned on a formal agreement that TBF would hold the funds as SMBRC's fiscal agent, primarily to hire and pay SMBRC staff. Dr. Luce has personal knowledge of that staffing arrangement as she oversaw that transition, which is well documented and is still referenced in your current Memorandum of Agreement with TBF. Every year, SMBRC chooses (apparently unknowingly) the recipient of the Section 320 funds when it approves the annual work plan. The GB could decide to allocate those funds to SWRCB, to SMBRA or to another entity or entities. Refusing to clarify this fact to the Governing Board is an unforced error in this process.

- Regarding the repeated complaints about inadequate staffing, when will someone suggest a solution? When will you candidly discuss why you had 18 staff in 2014 and two staff today? As the NEP Management Committee, can the GB direct NEP staff to perform tasks? Should SMBRC request funding from the legislature? Why has this never occurred?

- Regarding the suggestion that SMBRC was "forced" to make structural changes in response to litigation, this allegation is not supported by fact. The decision to have Tom Ford resign as ED of the SMBRC was **not sought or desired** by the Land Trust, but was rather TBF's decision. I suggest TBF agree to make that settlement agreement and related correspondence public to avoid any further confusion on the matter. The decision to terminate SMBRC members of TBF's board and to terminate SMBRC's right to appoint members was also

made solely by TBF. Likewise, the decision to have TBF vacate the public office space downtown was made solely by TBF to avoid having to account to SMBRC for the use of the space. To the extent SMBRC wishes to reverse any of these changes, that should be communicated to TBF, and TBF can finally explain their reasons for making these changes.

- Regarding the notion that comments from individual members of the Watershed Advisory Council (WAC) are more helpful than consensus recommendations by the Council as a body. please read the relevant text of your governing Memorandum of Understanding and determine if the MOU should be altered to better reflect that model. The MOU is a quasi-legislative documents that require adherence.

- Regarding SMBRC's desire to have more public bond funds allocated to it, please recall that you just last year tried to delegate away your role in selecting projects for Prop 12 funding. This was indeed a key purpose of the Legislature creating SMBRC, but the agency has been hollowed out and has allowed its institutional identity to be diluted.

- Finally, regarding the value of leveraged funds, it is our belief that you are so loosely interpreting what constitutes leverage monies that the actual benefit to the public is often lost. For instance, the National Fish and Wildlife Foundation grant to TBF is not a matching fund to the recently approved Prop 12 funds in any logical or legal interpretation of the phrase "matching fund."

We will continue to surface and advocate for facts as part of this process and in pursuit of our conservation goals. That is how we have prevented two special interest construction projects in the Ballona Wetlands Ecological Reserve and how we intend to expand access (a goal in SMBRC's 2013 BRP), ensure transparency and accountability in the CEQA process, ensure accountability in interim restoration projects and otherwise protect the public's interest in this ecosystem.

Thank you as always for your consideration of these comments.

Walter

Walter Lamb
Ballona Wetlands Land Trust
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On Wed, Jan 16, 2019 at 5:24 PM Walter Lamb <landtrust@ballona.org> wrote:

Dear EC members,

To facilitate informed discussion, I have compiled relevant pages of selected SMBRC records (and one Wildlife Conservation Board record) into the attached document with highlighting. You should be able to read the highlighted references to SMBRC's historical role with the Ballona Wetlands Restoration Project in a matter of minutes. I will be discussing this role in the context of a positive but very belated development in the restoration planing that relates directly to SMBRC's structure and governance.

Also, my understanding is that there will be follow up tomorrow on two action items requested by the Governing Board at the October meeting:

- 1) Status of SMBRC's ability to receive funds
- 2) Explanation of why facilitator resources of the State Water Resources Control Board, as offered by Jonathan Bishop, were not leveraged for this process.

Thank you as always for your consideration of these SMBRC documents.

Walter

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